



Legislative Bulletin.....March 9, 2005

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H.Res. 41— Expressing the sense of the House of Representatives that a day should be established as “National Tartan Day” to recognize the outstanding achievements and contributions made by Scottish-Americans to the United States (*McIntyre*)

Order of Business: The resolution is scheduled to be considered on Wednesday, March 9, under a motion to suspend the rules and pass the bill.

NOTE: Since 1994 when Republicans became the majority in the House of Representatives, the Rules of the House (Rule XII, Clause 5) prohibit bills that establish or express a commemoration (such as a day). This resolution avoids violating the House Rule by saying it is a “sense of the House” that the day should be established. Thus, the resolution does not violate the letter of the Rule, though it does call into question the spirit of the rule that was enacted after Republicans argued publicly the Democrat Congress was naming too many days.

Summary: The resolution resolves that:

“[I]t is the sense of the House of Representatives that a day should be established as ‘National Tartan Day’ to recognize the outstanding achievements and contributions made by Scottish-Americans to the United States.”

Additional Information: The Declaration of Arbroath, the Scottish Declaration of Independence, was signed on April 6, 1320. According to the resolution’s findings, “almost half of the signers of the Declaration of Independence were of Scottish descent, the Governors in 9 of the original 13 States were of Scottish ancestry, and Scottish-Americans successfully helped shape the Nation in its formative years and guide it through its most troubled times.”

Committee Action: On January 25, 2005, the resolution was introduced and referred to the House Committee on Government Reform, which took no official action on it.

Cost to Taxpayers: None.

Does the Bill Expand the Size and Scope of the Federal Government?: No

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No

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H.Res. 119 — Recognizing the contributions of the United States Marine Corps and other units of the United States Armed Forces on the occasion of the 60th anniversary of the Battle of Iwo Jima during World War II (Issa)

Order of Business: The resolution is scheduled to be considered on Wednesday, March 9, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 119 resolves that House of Representatives:

“(1) recognizes the 60th anniversary of the Battle of Iwo Jima; and

“(2) recognizes and commends the members of the United States Marine Corps and all other members of the United States Armed Forces who participated in the Battle of Iwo Jima for their sacrifice and contribution, with particular honor given to those members of the Armed Forces who gave their lives in defense of freedom during the Battle of Iwo Jima.”

Committee Action: On February 17, 2005 the resolution was introduced and referred to the House Committee on Armed Services, which took no official action on it.

Cost to Taxpayers: The resolution has no cost

Does the Bill Expand the Size and Scope of the Federal Government?: No

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No

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H.R. 3—Transportation Equity Act: A Legacy for Users (TEA-LU) (Young, Don)

Order of Business: The bill is scheduled to be considered on Wednesday, March 9th and Thursday, March 10th, subject to a structured rule (H.Res. 140). Passage of H.Res. 140 will automatically add amendments to the underlying text, as summarized below. In addition, the rule will also make in order 10 amendments for separate consideration in the Committee of the Whole later today. [These 10 amendments will be summarized in a separate RSC document.] The Committee of the Whole will then rise without motion. Tomorrow's continuing consideration of H.R. 3 can only go forward after the reporting and passage of *another* rule. NOTE: the "minimum guarantee," "scope" and additional high-priority projects issues are **NOT** addressed in any of today's amendments, including the amendments automatically adopted upon passage of today's rule.

Last year's bill, H.R. 3550, which is very similar to H.R. 3 this year, passed by a vote of 357-65: <http://clerk.house.gov/evs/2004/roll114.xml>

Summary of Some Key Issues:

Total Funding Level. H.R. 3 would reauthorize federal highway, highway safety, and mass transit programs for five years (FY2005-FY2009)—at an **initial** level of about \$284 billion (about 34% over the last multi-year authorization). See "Re-opener Clause" paragraph below.

Re-opener Clause. Section 1125 of the bill would prohibit states from receiving their highway program funds for fiscal year 2006 before August 1, 2006, unless a subsequent law is enacted raising the guaranteed rates of return to 92% in fiscal year 2006, 93% in fiscal year 2007, 94% in fiscal year 2008, and 95% in fiscal year 2009 without reducing any state's allotment from the year before. [Current law re-distributes to each state no less than 90.5% of each state's fuel taxes.] This provision is likely to result in significantly higher funding levels by delaying the highway program next year unless the highway bill is "re-opened."

According to the Statement of Administration Policy (SAP) for last year's bill, which contained a similar re-opener clause, "these levels cannot be supported by current and proposed revenues to the Highway Trust Fund, almost certainly necessitating either an increase in taxes or additional spending financed from the General Fund. Additionally, the uncertainty created by this provision, which effectively transforms the legislation into a two-year bill, negates the stability and planning benefits of a six-year bill." **Last year's SAP and this year's SAP both include a veto threat if the final bill contains a re-opener clause.**

Earmarks. H.R. 3 contains about \$8.9 billion in highway earmarks, which after a Manager's Amendment was approved in committee, includes 3,315 highway and bridge projects. There are also 414 bus and transit projects totaling almost \$1 billion. \$2.3 billion in additional highway earmarks will be added on the House floor tomorrow as part of another Manager's Amendment, bringing the total amount of highway earmarks to \$11.2 billion. Additional transit earmarks are likely to be added on the floor.

The SAP for H.R. 3 expresses opposition to the proliferation of earmarks and categorical set-asides.

Last year's bill contained about \$9.6 billion in total earmarks.

Historical note: President Ronald Reagan vetoed the 1987 highway bill, citing concerns with 152 earmarks. The Democrat Congress subsequently overrode his veto.

Minimum Guarantee and Scope (Section 1104): Although the text of this section of H.R. 3 remains unavailable (and will likely be addressed in TOMORROW'S Manager's Amendment), RSC staff is assuming that it will be similar to this provision in last year's bill. Last year in this section, the scope of programs included in calculating whether a state is reaching their Minimum Guarantee for highways (not transit) was modified to **exclude** "high priority projects" (earmarked funds), but to include "freight intermodal connectors, coordinated border infrastructure, safe routes to school, highway safety improvement, and high risk rural road safety improvement." The effect of this language was that earmarks would no longer count towards determining whether a state is getting its minimum guarantee. Earmarks would be distributed **in addition to** the guarantee. Furthermore, funds expended under the **new** program for projects of regional and national significance (projects with a cost exceeding \$500 million or 75% of a state's apportioned funds) were (and still in this bill are) not counted towards the minimum guarantee.

Press reports indicate that this section may raise the minimum guarantee from 90.5% to 92.5% or to 93.6%. [See "Re-opener Clause" section above.]

Funds Not Targeted to Highway Improvements: TEA-LU contains a number of **new** programs funded out of the Highway Trust Fund that are not directly related to improving the Interstate Highway System. These include:

Safe Routes to School Program (Sections 1101(21A) and 1120(a)): Creates a new \$875 million program to enable and encourage children to walk and bicycle to school. Between 10% and 30% of the funds apportioned to a state are to be used for non-infrastructure projects such as public awareness campaigns. States are required to employ a full-time Safe Routes to School Coordinator out of the funds provided to the state. Davis-Bacon prevailing wage laws would apply to this new program.

Nonmotorized Transportation Pilot Program (Sections 1101(21B) and 1120 (b)): Creates a new \$125 million grant program to carry out a nonmotorized transportation (walking and bicycling) pilot program. Davis-Bacon would appear to apply.

Truck Parking Facilities (Section 1306): Creates a new \$25 million program to increase the availability of long-term parking for commercial trucks, including funding parking facilities adjacent to commercial truck stops.

High Risk Rural Road Safety Improvements (Sections 1101 (19) and 1403): Creates a new program funded at \$590 million to cover 80% of the costs of construction of and improvements to rural roads with high accident rates.

Work Zone Safety Grants (Section 1809): Creates a new \$25 million program to make grants to non-profit organizations to provide training to prevent or reduce highway work zone injuries.

Program to Prohibit Racial Profiling (Section 1810): Creates a new \$50 million grant program for states that have enacted an anti-racial profiling law that meets certain requirements (including permitting public inspection of statistical information).

Freight Intermodal Connectors (Section 1303): Creates a new \$1.25 billion program to fund up to 80% of the cost of projects to improve freight intermodal connectors (roadways that connect to a port, airport, truck-rail terminal or pipeline terminal).

High-Priority Projects. The list of 3700+ earmarks entitled “High Priority Projects” in the Manager’s Amendment that passed in committee includes dozens, if not hundreds, of projects that are unrelated to highway construction, highway safety, or mass transit. A few examples include:

- An intermodal transportation facility at the Bronx Zoo (\$1.5 million)
- Sidewalk lighting, landscaping, and transit shelters at Cedar’s Sinai Medical Center, Los Angeles, CA (\$1.5 million)
- Parking facility at the Robert Wood Johnson University Hospital and UMDNJ-Robert Wood Johnson medical School, New Brunswick, NJ (\$2.0 million)
- Brooklyn Children’s Museum (\$1.4 million)
- Battery Park bikeway enhancements, Manhattan (\$2.0 million)
- Harlem Hospital Parking Garage (\$10 million)

Tolls on Existing Roads (Sections 1209, 1603, 1604): Section 1209 permits the creation of up to 25 “congestion pilot projects,” under which tolls could be imposed *on existing roads* with the funds used to carry out any program under the Highway title. Section 1603 permits the collection of tolls on three existing facilities (highways, bridges, or tunnels) on the Interstate Highway System to fund reconstruction and rehabilitation of such facilities. Section 1604 permits the collection of tolls on three existing facilities on the Interstate Highway System to fund the construction of interstate highways.

Mileage-Based Road User Charges (Section 1813): Creates a pilot project to study the feasibility of using “intelligent technology” to levy mileage-based road-user charges in order to collect revenues for the Highway Trust Fund.

Revenue Aligned Budget Authority (RABA) (Section 1108): Makes the annual RABA calculations account for two fiscal years at a time, instead of one. Highway program funding levels are tied to estimates of Highway Trust Fund receipts made at the time of enactment of the last multi-year authorization bill (TEA-21), and the levels are adjusted each year to reflect the latest information on Highway Trust Fund receipts. The annual calculation of this adjustment, known as revenue aligned budget authority or RABA, is intended to ensure that highway program funding tracks closely with actual and anticipated revenue to the Highway Account of the Highway Trust Fund.

Temporary Traffic Control Devices Mandate (Section 1107): Prevents funds from being spent on federal highway projects unless temporary traffic control devices are installed in accordance with the Manual on Uniform Traffic Control Devices on highways where work is being done.

Minority Set-Aside (Section 1101(b)): Sets aside no less than 10% of funds under highway, transit, and research programs for small businesses owned by “socially and economically disadvantaged individuals.”

Urban Mandate (Section 1201): Mandates that states with urbanized area populations of over 200,000 obligate a certain portion of their highway funds on certain congestion-relief activities, specifically focusing on projects to be accomplished within one year and within three years.

Expands the Definition of the Appalachian Region (Section 1805): Adds two counties in Kentucky, four counties in Ohio, four counties in Tennessee, and two counties in Virginia to the Appalachian Region, which receives special funding for projects.

DWI Mandate (Section 1406): Codifies that an increasing amount of funds will be withheld from states that fail to enact a statute providing that a blood-alcohol content of 0.08 shall constitute driving while intoxicated.

Child Restraints Grants (Section 2007): Creates a \$25 million grant incentive program for states that pass laws related to child passenger restraints that meet certain federal standards.

Motorcycle Accidents Incentive Grants (Section 2008): Creates a \$25 million grant program for states with programs to reduce accidents involving motorcycles (in accordance with certain federal criteria).

Grants to Train Commercial Motor Vehicle Operators (Section 4122): Provides \$5 million for a new grant program to train drivers and future drivers of commercial motor vehicles.

Amendments Automatically Adopted upon Passage of Today’s Rule (H.Res. 140):

- Sets discretionary outlay limits for the highway and mass transit budget categories and for new budget authority for the mass transit category, for fiscal years 2004-2009;
- Sets the annual obligation limitations for the highway category and mass transit category for fiscal years 2004-2009;
- Defines budget accounts and establishes budgetary firewalls for highway account-funded programs and the mass transit category programs;
- Adjusts the RABA (see above) mechanism to adjust highway spending in fiscal years 2007-2009 to align with the amount of highway receipts flowing into the highway account of the Highway Trust Fund;
- Amends clause 3 of rule XXI of the Rules of the House, by striking Transportation Equity Act for the 21st Century, and inserting Transportation Equity Act: A Legacy for Users. The clause referenced is: “It shall not be in order to consider a bill, joint

resolution, amendment, or conference report that would cause obligation limitations to be below the level for any fiscal year set forth in section 8103 of the Transportation Equity Act for the 21st Century, as adjusted, for the highway category or the mass transit category, as applicable.”

- Also amends clause 3 to allow certain limitations on specific projects;
- Allows for certain funds transfers from the basic salaries and administrative expenses of the Federal Transit Administration to other mass transit accounts.
- **Does NOT address “minimum guarantee,” “scope,” or additional high-priority projects.**

Additional Background: Last year, the Administration proposed a \$256 billion, six-year bill and threatened to veto anything above that amount. The \$256 billion figure was a 21% increase over the amounts provided in TEA-21, the six-year bill enacted in 1998. The bill last Congress never emerged from a conference committee because of disagreements about overall funding levels, thus Congress passed six separate extension bills to keep highway programs funded. The last multi-year authorization bill for federal highway programs expired in October 2003. The current extension expires on May 31, 2005.

Committee Action: On February 9, 2005, the bill was referred to the Transportation & Infrastructure Committee, which marked up the bill on March 2nd, passing by voice vote a manager’s amendment that added thousands of earmarks to the bill. The committee-reported bill became available on March 7th.

Administration Position: A Statement of Administration Policy (SAP) for H.R. 3 says that “The Administration supports House passage of H.R. 3 as reported from committee.” The bill’s overall funding level is reflected in the President’s FY2006 budget proposal. The Administration continues to oppose any increase in fuel taxes or the use of general revenues to pay for highway programs. As a result, the SAP includes a veto threat for the bill if the bill’s total net cost exceeds \$284 billion or if the re-opener clause (explained above) is not removed.

The SAP also expresses opposition to the proliferation of earmarks and categorical set-asides and conveys a willingness to “work with Congress to resolve constitutional issues raised by the bill.”

The Administration is reportedly supporting a higher level of funding this year because provisions passed in the American Jobs Creation Act (FSC-ETI) are expected to increase revenues to the Highway Trust Fund.

Cost to Taxpayers: Only a partial CBO cost estimate is available. When CBO completes its cost estimate of H.R. 3, the costs will be reflected in the RSC’s “Money Monitor” document. CBO does confirm the press estimates that put the total five-year authorization at about \$284 billion. [See “Re-opener Clause” paragraph above for additional information.]

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill contains dozens of new programs and new mandates on states.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill contains a variety of new mandates on states, some of which are highlighted above.

Constitutional Authority: The Transportation and Infrastructure Committee, in House Report 109-12, cites constitutional authority in Article I, Section 8, but fails to cite a specific clause. House Rule XIII, Section d(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

In the SAP for H.R. 3, the Administration notes that it will “work with Congress to resolve constitutional issues raised by the bill.” The SAP does not elaborate.

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